EV 03-0099-C Y/H Roy & Anderson v Newburgh
Judge Richard L. Young Signed on 2/28/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

JUSTIN ANDERSON, JULIE STUCKER, CLINT ROY, FREDDIE ROY, TONUYA ROY, Plaintiffs, vs. NEWBURGH, THE TOWN OF, BRETT SPRINKLE, GARY W. BROWN, JASON SPRINGER, DARREL HEALY, Defendants.	)	NO. 3:03-cv-00099-RLY-WGH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

CLINT ROY, Individually, and FREDDIE AND TONUYA ROY, as parents and natural guardians of Clint Roy,	)	
JUSTIN ANDERSON, Individually, and JULIE STUCKER, as Mother and Natural Guardian of JUSTIN ANDERSON	)	
	)	3:03-cv-099-RLY-WGH
Plaintiffs,	)	
vs.	)	
THE TOWN OF NEWBURGH, BRETT SPRINKLE, GARY W. BROWN, JASON SPRINGER, and DARREL HEALY,	)	
Defendants.	)	

ENTRY ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. Introduction

This matter is before the court on Defendants' Motion for Summary Judgment filed July 30, 2004. Plaintiff filed a Response on August 30, 2004.

II. Background

On April 4, 2002, Plaintiff Justin Anderson ("Justin") was at his home located at 206 Sycamore Street, Newburgh, Indiana, along with Plaintiff Clint Roy ("Clint") as well as Eric Hacker ("Eric"), (collectively "Plaintiffs"). (Defendants' Brief in Support of Motion for Summary Judgment at 2-3). All three were juveniles, each being only 16 at the time of the

incident that is the subject of this lawsuit. (Deposition of Justin Anderson ("Justin Anderson Dep.") at 5-9). Defendants Brett Sprinkle ("Sprinkle"), Gary W. Brown ("Brown"), Jason Springer ("Springer"), and Darrel Healy ("Healy") (collectively "Defendants") are duly trained, sworn and acting police officers employed by the Town of Newburgh Police Department. (Defendants' Brief in Support of Motion for Summary Judgment at 2-3).

On the afternoon of April 4, 2002, Defendants were investigating the suspected use and sale of marijuana by Justin's older brother, Nathan Anderson ("Nathan"). (Deposition of Julie Anderson ("Julie Anderson Dep.") at 17); (Defendants' Brief in Support of Motion for Summary Judgment at 3). Nathan and Justin lived with their mother, Julie Stucker[1] ("Julie"), along with their younger brothers. Defendants obtained a search warrant for the Stucker/Anderson residence and two vehicles owned by Julie. (Affidavit for Search Warrant at 2). The search warrant was issued by the Warrick Superior Court. (Search Warrant at 1).

Prior to serving the warrant, Sprinkle and Springer watched the Stucker/Anderson home for approximately forty-five (45) minutes. (Deposition of Gary Brown ("Brown Dep.") at 6). During this time, Sprinkle and Springer observed Justin, Clint, and Eric at the residence. (Deposition of Brett Sprinkle ("Sprinkle Dep.") at 7-8, 29). The boys were aware that Sprinkle and Springer were watching them. (Justin Anderson Dep. at 11-12, 30). At some point, the boys left the residence on foot. (Sprinkle Dep. at 9). Justin had observed the police car outside his residence and the boys wanted to see what was going on. (Justin Anderson Dep. at 12). They were eventually stopped by Brown, within eyesight of the Stucker/Anderson home, about a half-block from the home, as they were returning. (Brown Dep. at 9-11).

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[1]Stucker, after her divorce, has since changed her last name back to Anderson to coincide with the last names of her children. (Julie Anderson Dep. at 3).

Sprinkle arrived at the location where the boys had been stopped and informed Justin that the officers had a search warrant for his home. (Sprinkle Dep. at14). The boys were allegedly detained for purposes of the search warrant. (*Id.* at 12-13). Defendants were concerned that the boys had just left the residence, they may have had evidence with them, and the officers did not want any evidence to be destroyed. (*Id.* at 9-13, 29); (Brown Dep. at 9). After being detained by Defendants, the three boys were patted down. (Brown Dep. at 13). They were then handcuffed behind their backs, placed in Defendants' vehicles, and transported to the Anderson/Stucker home. (Sprinkle Dep. at 14). Defendants claim that this was done for Defendants' safety and in accordance with Officer training and Department policy. (Defendants' Brief in Support of Motion for Summary Judgment at 4).

When everyone arrived at the home, Defendants had Justin let them into the home and then placed the boys, still handcuffed, on the family room couch. (Justin Anderson Dep. at 22-23). After the boys were placed on the couch, Defendants conducted a safety check or protective sweep of the home. (Sprinkle Dep. at 17). Defendants found a shotgun hanging on the wall in the family room and secured the weapon. (Justin Anderson Dep. at 25). Approximately 30 to 40 minutes after they entered the home, Defendants removed the boys' handcuffs. (*Id*. at 23). However, they were forced to remain on the couch until the search was completed. (Sprinkle Dep. at 18).

Sometime after the boys handcuffs were removed, Julie returned home at approximately 4:55 p.m. (Julie Anderson Dep. at 12-13). She was presented with the search warrant and informed that her son, Nathan, had been dealing marijuana. (*Id*. at 17). Julie cooperated with Defendants while the search was ongoing. (Sprinkle Dep. at 21). Most of the time she was required to stay in the family room with the boys, but she also accompanied the officers to assist

them at times. (*Id*.). All told, the search of the Anderson/Stucker home took two-and-a-half to three hours. (*Id*. at 18). During their search, Defendants recovered marijuana, drug paraphernalia, a pellet gun, and two pipes which smelled of marijuana. (Julie Anderson Dep. at 10, 19-20). After the search was completed, Julie and the three boys were free to go. (Sprinkle Dep. at 22).

Eventually, while the search was still underway, Nathan also returned home. (*Id*. at 21). He was searched and subsequently arrested for possession of less than 30 grams of marijuana. (*Id*. at 21-22). He admitted that he smoked marijuana. (Julie Anderson Dep. at 23). Nathan was convicted and sentenced to one year of probation after pleading guilty to possession of marijuana. (*Id*. at 10).

III. Summary Judgment Standard

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The motion should be granted so long as no rational fact finder could return a verdict in favor of the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Thus, a court's ruling on a motion for summary judgment is akin to that of a directed verdict, as the question essentially for the court in both is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52. When ruling on the motion, the court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences therefrom in that party's favor. *Id.* at 255. If the nonmoving party bears the burden of proof on an issue at trial, that party "must set forth specific facts showing that there

is a genuine issue for trial." Fed.R.Civ.P. 56(e); *see also Silk v. City of Chicago,* 194 F.3d 788, 798 (7th Cir. 1999). Lastly, the moving party need not positively disprove the nonmovant's case; rather, it may prevail by establishing the lack of evidentiary support for that case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

IV. Analysis

Defendants have brought this motion for summary judgment claiming that there was no violation of the Constitution, that they are entitled to quasi-judicial immunity, that they are entitled to qualified immunity, that Defendant Town of Newburgh is entitled to municipal immunity, and that the state-law violations should be dismissed because no federal question remains.

A. Reasonableness of the Seizure

Defendants argue that summary judgment is warranted because there was no violation of the Constitution. Their argument is that Plaintiffs' seizure was not unreasonable, and that they are, therefore, entitled to summary judgment.

The Fourth Amendment governs the incident at issue in this case and it explains, in part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. CONST. amend. IV. Three areas of police behavior which fall under the Fourth Amendment are specifically implicated by the actions of the officers in this case: 1) an investigatory stop; 2) an official seizure that did not rise to the level of a formal arrest, and 3) a seizure of individuals during the execution of a search warrant.

Generally, under the Fourth Amendment, individuals are entitled to be free from

unreasonable government intrusion. *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L. Ed.2d 576 (1967). However, it is important to note that the Constitution does not forbid all searches and seizures, only unreasonable ones. *Elkins v. United States*, 364 U.S. 206, 222, 80 S.Ct. 1437, 1446, 4 L. Ed.2d 1669 (1960). In determining if Defendants' actions were reasonable in this case, the court is guided by three rules. First, *Terry v. Ohio* explains that

> where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L. Ed.2d 1889 (1968). The officer, in justifying the search and seizure, must, therefore, "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Id*. at 21.

Next, the Supreme Court's decision in *Dunaway v. New York* provides that an official seizure of a person must be supported by probable cause, even if the officer makes no formal arrest. *Dunaway v. New York* , 442 U.S. 200, 99 S.Ct. 2248, 60 L. Ed.2d 824 (1979). And finally, the holding in *Michigan v. Summers*, explains that a warrant to search for contraband within a particular premises "carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Michigan v. Summers*, 452 U.S. 692, 705, 101 S.Ct. 2587, 69 L. Ed.2d 340 (1981).

Having outlined the relevant rules that govern police behavior during a search and seizure, we now turn to the relevant facts in this case. Plaintiffs, along with Eric Hacker, who is

not a party to this suit, were on a street approximately a half block away from Justin's home when they were stopped by Defendants. They were informed that Defendants had a search warrant to search Justin's home. Justin's older brother, Nathan, was suspected of possession and sale of marijuana. After stopping the three boys and informing Justin of the search warrant, they were patted down.

This initial portion of the search is Constitutional only if it conforms with the Court's holding in *Terry v. Ohio*. Thus, Defendants must be able to point to specific articulable facts which suggest that Plaintiffs were engaging in criminal behavior. Moreover, Defendants must not be relying on a mere hunch, but must rely on specific facts. *Terry*, 392 U.S. at 27. In this case, Defendants' depositions indicate that they simply believed that Plaintiffs could have been acting as decoys or could have been attempting to discard evidence. Defendants are unable to point to anything more concrete to back up their decision to stop Plaintiffs when they did. The court concludes that this hypothetical amounts to nothing more than a hunch. It is true that the officers had probable cause to believe that criminal activity was occurring within the Stucker/Anderson home by Nathan Anderson, but that fact alone surely does not justify the detention of any member of the Anderson family, let alone that person's friends.[2]

In addition, the court notes that *Terry v. Ohio* permits a limited 'pat down' or 'frisk' if an officer believes that the individual he has stopped is presently armed and dangerous. *Terry*, 392 U.S. at 30. However, this search may only be conducted after an officer has stopped the individual, inquired of him, and the inquiry does not relieve the officer's fears. *Id*. There is

[2]Had Defendants witnessed Nathan Anderson directing Plaintiffs to leave the Stucker/Anderson home or had Defendants observed Plaintiffs with a bag or some other container, perhaps the officers would have had a legitimate reason to stop Plaintiffs. But, absent some additional facts, this stop was improper.

absolutely nothing in the facts surrounding this case that would lead a reasonable person to believe that these three young boys were armed and dangerous. Thus, the court concludes that Defendants' actions were not reasonable under the circumstances.

Because the initial stop and pat down was improper, placing Plaintiffs in handcuffs in the back of the police vehicles was also improper. As the court noted above, *Dunaway v. New York* indicates that an officer who officially seizes an individual, even if no formal arrest occurs, must have probable cause. *Dunaway*, 442 U.S. 200. It is true that the placement of an individual in handcuffs does not automatically amount to an informal arrest requiring probable cause. *United States v. Glenna*, 878 F.2d 967, 972 (7th Cir. 1989). However, the Seventh Circuit acknowledged that it would be a rare case where an officer would be permitted to place an individual in handcuffs without probable cause. *Id.*[3] The court concludes that this was not such a case. First, this was not just a handcuffing, but a handcuffing, a placement in the back of a police vehicle, and a transportation to another location. The court is uncertain whether the Seventh Circuit would regard Defendants' actions in the same light as those in *Glenna*. The court need not reach that question, however, as the Defendants' concerns simply did not warrant placing Plaintiffs in handcuffs. The court has already concluded that Defendants did not have reasonable suspicion to stop and frisk Plaintiffs. Hence, this certainly was not one of those rare occasions where the Defendants needed to place Plaintiffs in handcuffs.[4]

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[3]The Seventh Circuit reasoned that "[i]f, in a rare case, common sense and ordinary human experience convince us that an officer believed reasonably that an investigative stop could be effectuated safely only in this manner, we will not substitute our judgment for that of the officers, as to the best methods to investigate."

[4]Defendants claim that handcuffing Plaintiffs was part of police procedure, and that they always handcuff individuals when they are going to transport them in the back of a police vehicle. The court is not persuaded by this argument. Defendants were not justified in their

Having concluded that the stop and frisk as well as the handcuffing of Plaintiffs was unreasonable, Defendants are left with one final argument that could legitimize their actions. Defendants claim that the entire incident was reasonable because they were executing a validly issued search warrant. If an officer executes a search warrant on a particular residence, he is permitted to detain the occupants of that residence. *Summers*, 452 U.S. at 705. The Seventh Circuit has also held that, in addition to the residents of a home, officers are also permitted to detain visitors while they execute the search warrant. *United States v. Pace*, 898 F.2d 1218, 1239 (7th Cir. 1990). Thus, if all that Defendants had done was execute the search warrant while Plaintiffs were in the Stucker/Anderson home, their detention of Plaintiffs while the search was carried out likely would have been reasonable. Unfortunately for Defendants, that is not what occurred.

Because Plaintiffs were not initially in the home, their detention was not reasonable and was contrary to the Supreme Court's reasoning in *Summers*. This is true because two of the rationale for allowing the seizure in *Summers* are not present in this case. First, the Supreme Court in *Summers* had explained that the seizure of occupants is reasonable because occupants of the house searched are likely to wish to remain so they may oversee the search of their possessions. *Summers*, 452 U.S. at 701. Plaintiff, Clint Roy, was not a resident of the Stucker/Anderson home and likely had no possessions inside; hence, this rationale would not apply to him. The Court in *Summers* also reasoned that such a seizure would not be unreasonable because it would not carry with it the public stigma or indignity of either the search of the home itself or a trip to the police station. *Id*. at 702. However, that certainly is not the case

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decision to place Plaintiffs in the back of their vehicles. Hence, they were equally unjustified in their decision to place Plaintiffs in handcuffs.

here. Plaintiffs were handcuffed and placed in the back of a police car as if they were the wrongdoers. This was done in their own neighborhood, undoubtedly in front of countless neighbors. It is, therefore, difficult to imagine how one could argue that there was minimal stigma or indignity involved in this particular case.[5]

Finally, the court concludes that this search was unreasonable because nothing in the court's reading of the case law since *Summers* suggests that the police may stop an individual and his friends on the street and return them to the individual's home to execute a search warrant. In fact, at least two other circuits have concluded that such a scenario amounts to an unreasonable seizure and is not the type of police activity protected by *Summers*. In *United States v. Sherrill*, police officers stopped an individual one block from his home in order to execute a search warrant on the home. The individual was suspected of dealing crack cocaine, and he had just left his home. The Eighth Circuit concluded that stopping an individual outside of his home is not governed by *Summers*. *United States v. Sherrill*, 27 F.3d 344, 346 (8th Cir. 1994)("Here, because Sherrill had already exited the premises, the intrusiveness of the officers' stop and detention on the street was much greater."). Additionally, in *United States v. Edwards*, police had a search warrant to search a suspected "drug house." 103 F.3d 90, 91-92 (10th Cir. 1996). The police witnessed Edwards leaving the house and stopped him several blocks away. After the police obtained keys to the house from Edwards, he was detained while the search proceeded. The Tenth Circuit concluded that Edwards' detention during the search of the home was illegal and not covered by the Supreme Court's decision in *Summers*. *Id*. at 94.

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[5]Furthermore, the Court specifically noted that doubt might be cast on the reasonableness of a detention if it involved "moving the suspect to another locale." *Summers*, 452 U.S. at 700 n.12.

The court notes that, in the present case, the facts are even more favorable to Plaintiffs. In both *Sherrill* and *Edwards*, the individuals who were detained were also the subjects of the search warrant. Had Defendants in this case detained Nathan Anderson, such a detention would have been similar to the detentions in those cases, but likewise would have been unreasonable. However, the police in this case detained three individuals who were even more detached from the search warrant itself, and their detention was even more inappropriate.

Defendants have failed to demonstrate that Plaintiffs' seizure, pat down, and subsequent trip back to the Stucker/Anderson home were reasonable under the Fourth Amendment. The facts, viewed in the light most favorable to Plaintiffs, show that Defendants' conduct violated a constitutional right. Defendants have, therefore, failed to satisfy their burden of demonstrating that they are entitled to judgment as a matter of law, and summary judgment is not warranted. Fed.R.Civ.P. 56(c).

B. Judicial Immunity

Defendants also claim that they were simply carrying out the directives of a validly-issued search warrant, and that they, therefore, are entitled to absolute judicial immunity. Ordinarily, qualified immunity is sufficient to protect police officers carrying out their official duties. *Malley v. Briggs*, 475 U.S. 335, 340-41, 106 S.Ct. 1092, 89 L. Ed.2d 411 (1995). The officers in this case argue that the ordinary rule does not apply because they were obligated to carry out the judge's order. According to this theory, a form of absolute immunity referred to as quasi-judicial immunity protects the officers' actions.

"[G]enerally, a judge is immune from a suit for money damages." *Mireles v. Waco*, 502 U.S. 9, 112 S.Ct. 286, 116 L. Ed.2d 9 (1991). Additionally, a judge's absolute immunity has been extended to cover the quasi-judicial conduct of some "[n]on-judicial officials whose

official duties have an integral relationship with the judicial process." *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238 (7th Cir. 1986). The Seventh Circuit has reasoned that officials who make quasi-judicial decisions should be afforded freedom from the harassment and intimidation that is associated with litigation. *Kincaid v. Vail*, 969 F.2d 594, 600-01 (7th Cir. 1992). Hence, the Seventh Circuit has granted immunity to those, such as parole board members, whose conduct is "functionally comparable" to the conduct of judges. *See Wilson v. Kelkhoff*, 86 F.3d 1438, 1443-44 (7th Cir. 1996). However, courts have also extended quasi-judicial immunity to other conduct as well. The Seventh Circuit in *Kincaid* explained that "when functions that are more administrative in character have been undertaken pursuant to the explicit direction of a judicial officer, we have held that that officer's immunity is also available to the subordinate." *Kincaid v. Vail*, 969 F.2d at 601.

The key to determining if a police officer is entitled to quasi-judicial immunity is to examine the nature of the plaintiff's complaint in relation to the officer's conduct. If a suit was brought against the officers simply for carrying out the orders of a judge in an arrest warrant, then their actions fall under the protection of quasi-judicial immunity. *Richman v. Sheahan*, 270 F.3d 430, 436-38 (7th Cir. 2001). "By contrast, when the conduct directly challenged is not the judge's decision making, but the manner in which the decision is enforced, . . . the law enforcement officer's fidelity to the specific orders of the judge marks the boundary for labeling the act 'quasi-judicial.'" *Id*. at 436. Thus, if the wrong complained of is not the judge's order, but is, instead, the manner in which that order is carried out, then quasi-judicial immunity is no protection for the officers. *Id*. This is true because the manner in which an officer enforces a judicial order implicates an executive function, not a judicial one. *Id*. at 438.

In this case, Plaintiffs do not challenge the issuance of the search warrant. Their

complaint is against the officers for the manner in which that search warrant was executed. Plaintiffs complain that Defendants should not have detained three minors outside of the home, conducted a pat down, handcuffed them, and returned them to the home, all simply to execute a search warrant. The court concludes that, because the unlawful conduct complained of was the manner in which officers executed a search warrant, quasi-judicial immunity does not apply.

C. Qualified Immunity

The individual Defendants' next argument is that they are entitled to qualified immunity. When an officer raises the issue of qualified immunity, courts must engage in a two-step process. "[T]he first inquiry must be whether a constitutional right would have been violated on the facts alleged; second, assuming the violation is established, the question whether the right was clearly established must be considered . . . ." *Saucier v. Katz*, 533 U.S. 194, 200, 121 S.Ct. 2151, 150 L. Ed.2d 272 (2001). The Supreme Court has stressed that questions of immunity should be addressed at the earliest possible stage of litigation. *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S.Ct. 534, 116 L. Ed.2d 589 (1991)(*per curiam*). Swiftness is necessary because "[q]ualified immunity is an entitlement not to stand trial or face the other burdens of litigation. The privilege is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Katz*, 533 U.S. at 200-01 (internal citations and quotations omitted).

In this case, the court has already addressed above its belief that a constitutional right was violated on the facts alleged. Defendants' seizure of Plaintiffs lacked the reasonable suspicion necessary to conduct the stop itself as well as the 'frisk.' Defendants also lacked the requisite probable cause to handcuff Plaintiffs and place them in the back of their vehicles. And finally, Defendants' actions were not simply a seizure pursuant to the execution of a search

warrant because Plaintiffs were not stopped on the premises being searched, but were transported there after being stopped a half block away.

Having determined that Defendants' actions, based on the facts alleged, violated a constitutional right, the court's task is to determine if that right was clearly established. *Katz*, 533 U.S. at 200. "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id*. at 202. However, "[t]hat is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L. Ed.2d 523 (1987). If "various courts have agreed that certain conduct is a constitutional violation under facts not distinguishable in a fair way from the facts presented in the case at hand," then an "officer would not be entitled to qualified immunity based simply on the argument that courts had not agreed on one verbal formulation of the controlling standard." *Katz*, 533 U.S. at 202-03.

Applying this analysis to the case at hand, the court concludes that the right was clearly established and Defendants are not entitled to qualified immunity. There is a consensus of cases of persuasive authority which indicate that an officer is not permitted to stop an individual on the side of the street, after he has left his home, and then return him to the home in order to execute a search warrant. *See Edwards*, 103 F.3d at 91-92; *Sherrill*, 27 F.3d at 346. In those cases, the individuals stopped were also suspected of wrongdoing themselves. While this case involves three minors that were not suspected of wrongdoing who simply happened to have left the house that was to be searched, the court finds that this situation involves "facts not distinguishable in a fair way" from the facts of *Edwards* or *Sherrill*. *Katz*, 533 U.S. at 202-03. Additionally,

Defendants had no reasonable suspicion to stop and frisk Plaintiffs and had no probable cause to handcuff them and place them in a police vehicle. Under these facts, the court finds that it would be clear to a reasonable police officer that these actions by Defendants were unlawful. *Id*. at 202.

D. The Town of Newburgh

Defendant, the Town of Newburgh, also seeks summary judgment claiming that it is entitled to municipal immunity. In *Morell*, the Supreme Court decided that a municipality may only be found liable under 42 U.S.C. § 1983 ("§ 1983 ") where the municipality causes the constitutional violation at issue. *Morell v. New York City Dept. Of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). "Thus, our first inquiry in any case alleging municipal liability under § 1983 is the question whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *City of Canton v. Harris*, 489 U.S. 378, 385, 109 S.Ct. 1197, 103 L.Ed. 2d 412 (1989). In this case, Plaintiffs have failed to point out any municipal policy or custom which lead Defendants to detain them in the manner they were detained in this case. Having demonstrated no such policy or custom, Plaintiffs are left with one additional avenue of municipal liability.

The Town of Newburgh may also be held liable based on a claim of failure to train. The failure to train officers may only serve as a basis for liability under § 1983 where the failure to train amounts to deliberate indifference to the rights of those individuals with whom the police come into contact. *Harris*, 489 U.S. at 388. In this case, Plaintiffs have not even plead a failure to train. Furthermore, there are no facts that demonstrate a deliberate indifference on the part of the Town of Newburgh. Because Plaintiffs have demonstrated no policy or custom that lead to the officers' actions, and because there have been no facts put forward by Plaintiffs that suggest

a failure to train, Defendant, Town of Newburgh, is entitled to summary judgment.

E. State Law Claims

Finally, Plaintiffs allege several state law claims including false arrest, false imprisonment, battery, and trespass. In order to determine the viability of Plaintiffs' state law claims, the court must first examine the Indiana Tort Claims Act ("ITCA"). Ind. Code §§ 34-13-3-1 through 3-25 (2001). The ITCA provides that "[a] government entity or an employee acting within the scope of the employee's employment is not liable if the loss results from . . . [t]he adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment." A police officer is engaged in "enforcement" of the law so long as he is compelling or attempting to compel obedience to the law or he is sanctioning or attempting to sanction a violation of the law. *Mullin v. Mun. City of South Bend*, 639 N.E.2d 278, 283 (Ind. 1994). The Indiana Court of Appeals has, therefore, held that a police officer who arrests an individual (even if the arrest was wrongful) is immune from liability on all state law tort claims except those for false arrest or imprisonment. *Miller v. City of Anderson*, 777 N.E.2d 1100, 1104 (Ind. Ct. App. 2002). Based on the Indiana Court of Appeals holding in *Miller*, the court concludes that Defendants are immune from suit on all of Plaintiffs' state law claims except for those for false arrest and false imprisonment. Defendants were executing a validly-issued search warrant when they detained Plaintiffs, thus they were engaged in law enforcement duties and they are immune from suit on these claims.

However, Plaintiffs' claims of false arrest and false imprisonment remain intact. "A defendant may be liable for false arrest when he or she arrests the plaintiff in the absence of probable cause to do so." *Miller*, 777 N.E.2d at 1104. Probable cause may be demonstrated by a

showing of facts and circumstances which were known to the arresting officer which would lead an individual of reasonable caution and prudence to believe that the individual had committed or was committing a criminal offense. *Gomez v. Adams*, 462 N.E.2d 212, 222 (Ind. Ct. App. 1984). Additionally, false imprisonment consists of the deprivation of an individual's liberty without consent or the unlawful restraint of an individual's freedom of movement. *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 967 (Ind. Ct. App. 2001). Hence, if it is determined that Defendants had no probable cause to arrest Plaintiffs and that Plaintiffs were, in fact, arrested, then it follows that Plaintiffs would have a valid claim of false imprisonment as well.

In this case, the court has concluded above that, under the facts as they have been presented to the court thus far, Defendants lacked the probable cause necessary to place Plaintiffs in handcuffs, place them in police vehicles, and return them to the Stucker/Anderson home. Thus, all that remains is the question of whether or not this amounted to an arrest. The court concludes that there is still a genuine issue of material fact as to whether or not Defendants' actions amounted to an arrest. Plaintiffs were allegedly detained for two-and-a-half to three hours. Plaintiffs allege that they were handcuffed for approximately thirty minutes of this time. Under these facts, a jury could conclude that Plaintiffs were arrested. Defendants' motion for summary judgment on Plaintiffs' claims of false arrest and false imprisonment must, therefore, be denied.

IV. Conclusion

For the reasons outlined above, Defendants' motion for summary judgment is **GRANTED IN PART and DENIED IN PART**.

IT IS SO ORDERED this 28th day of February 2005.

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RICHARD L. YOUNG, DISTRICT JUDGE
United States District Court
Southern District of Indiana

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